

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

PRO SE SERVICES, et al.,

Case No. 3:13-cv-00244-MMD-VPC

Appellants,

v.

ORDER

A&A AUTO WRECKING, LLC,

(Appellee's Motion to Dismiss Appeal –
dkt. no. 40)

Appellee.

I. SUMMARY

Before the Court is Appellee A&A Auto Wrecking, LLC's ("A&A") Motion to Dismiss Appeal. (Dkt. no. 40.) Based on the reasoning set forth below, the Motion is granted.

II. BACKGROUND

Pro Se appeals from the Bankruptcy Court's Order Authorizing Debtor to Sell Personal Property Free and Clear of Liens and Encumbrances. *In re A&A Auto Wrecking, LLC*, No. 12-50686-btb (Bankr. D. Nev. Apr. 23, 2013), ECF No. 295. The Notice of Appeal was filed on May 7, 2013, and the case brought before this Court on May 8, 2013. *In re A&A Auto Wrecking, LLC*, ECF No. 299; (see dkt. no. 1).

On May 20, 2013, and subsequent to the Notice's filing, Pro Se filed in the Bankruptcy Court its Motion for Stay Pending Appeal seeking to stay the transfer of a disputed truck that was ordered sold by the Bankruptcy Court's order. *In re A&A Auto Wrecking, LLC*, ECF No. 309. A day later, Pro Se brought an Emergency Motion before this Court seeking the same relief it asked for in its Motion for Stay. (See dkt. no. 5.) On

1 May 23, 2013, Pro Se filed a Notice of Hearing informing A&A that the hearing on the
2 Motion for Stay before the Bankruptcy Court was scheduled for June 26, 2013. *In re A&A*
3 *Auto Wrecking, LLC*, ECF No. 319. This Court denied the Emergency Motion, stating
4 that Pro Se had failed to provide any reason not to let the Bankruptcy Court hear and
5 decide the Motion for Stay. (See dkt. no 12.) On June 26, 2013, the Bankruptcy Court
6 denied Pro Se's Motion for Stay. *In re A&A Auto Wrecking, LLC*, ECF Nos. 358, 359.
7 The same day, Pro Se brought a Renewed Emergency Motion before this Court. (Dkt. no
8 21.) On July 5, 2013, the Court denied the Renewed Motion as Pro Se failed to
9 demonstrate that it is likely to succeed on the merits. (Dkt. no. 29.)

10 The title to the roll-off truck was formally transferred, per the Bankruptcy Court's
11 order, on June 28, 2013, and all other property had been transferred on May 13, 2013.
12 (See dkt. no. 40 at 3.) The purchaser of the roll-off truck was B.V. Nevada Corp. (See
13 *id.*) In the instant motion, A&A seeks to dismiss Pro Se's appeal on the grounds that it is
14 moot following the sale of disputed property.

15 III. LEGAL STANDARD

16 When a sale of assets is made under 11 U.S.C. § 363(b) and (c) to a good faith
17 purchaser, it is protected by the Safe Harbor Provision and may not be modified or set
18 aside unless the sale was stayed pending appeal. See 11 U.S.C. § 363(m) (1994) ("The
19 reversal or modification on appeal of an authorization under subsection (b) or (c) of this
20 section of a sale or lease of property does not affect the validity of a sale or lease under
21 such authorization to an entity that purchased or leased such property in good faith,
22 whether or not such entity knew of the pendency of the appeal, unless such
23 authorization and such sale or lease were stayed pending appeal.") "Finality in
24 bankruptcy has become the dominant rationale for our decisions; the trend is towards an
25 absolute rule that requires appellants to obtain a stay before appealing a sale of assets."
26 *Onouli-Kona Land Co. v. Estate of Richards (In re Onouli-Kona Land Co.)*, 846 F.2d
27 1170, 1172 (9th Cir.1988). "Whether a[] [Bankruptcy] order directly approves the sale or
28 simply lifts the automatic stay, the mootness rule dictates that the appellant's failure to

1 obtain a stay moots the appeal.” *Id.* at 1171 (citing *Algeran, Inc. v. Advance Ross Corp.*,
2 759 F.2d 1421, 1423 (9th Cir. 1985)).

3 **IV. DISCUSSION**

4 The Bankruptcy Court’s Order authorized the sale of the roll-off truck under 11
5 U.S.C. § 363(b). (See dkt. no. 1-3 at 2.) The Court therefore agrees with A&A that, on its
6 face, § 363(m) applies to the sale. Pro Se argues, however, that § 363(m) does not
7 apply because there was an underlying state law dispute over the rights to the property
8 prior to its sale. (See dkt. no. 41 at 2–3.) Pro Se’s primary citation in support of its
9 argument is *Darby v. Zimmerman (In re Popp)*, 323 B.R. 260 (BAP 9th Cir. 2005). While
10 the Court in *In re Popp* reviewed and reversed the Bankruptcy Court’s sale order
11 following the completion of the sale of the property at issue in that case, it based that
12 decision on the fact that the Bankruptcy Court had failed to make a determination about
13 the owner of the property in question before selling it. (See *id.* at 270.) In this case, the
14 Bankruptcy Court held a three-day evidentiary hearing and determined that the debtor
15 was the owner of the assets at issue. (See dkt. no. 42 at 3.) Indeed, Pro Se
16 acknowledges in its brief that the Bankruptcy Court made the determination that it was
17 not the owner of the roll-off truck. (See dkt. no. 41 at 3.) As a result, the holding of *In re*
18 *Popp* does not apply to the facts of this case and Pro Se does not cite, nor is the Court
19 aware of, a case that stands for the proposition that a party’s objection to the Bankruptcy
20 Court’s determination of property ownership negates the application of the Safe Harbor
21 Provision. Indeed, such a proposition is counter to the dominant rationale of finality in
22 such cases. (See *In re Onouli-Kona Land Co.*, 846 F.2d at 1172.)

23 Pro Se additionally argues that § 363(m) does not apply because Debtor has not
24 demonstrated that the buyer was a good faith purchaser. Specifically, Pro Se asserts
25 that because the buyer had to have known that there was an ownership dispute over the
26 property in question, the buyer could not have acted in good faith. (See dkt. no. 41 at 5–
27 6.) The Bankruptcy Court held that § 363(m) applied to the sale and specifically found
28 that there was no evidence that the purchaser acted in bad faith. (See dkt. no. 42 at 4-5.)

1 Pro Se provides no facts in support of its assertion that the buyer in fact knew about the
2 ownership dispute, and cites no case that holds knowledge of a dispute precludes a
3 buyer from acting in good faith. The Court, therefore, agrees with the Bankruptcy Court
4 that there is no evidence that the buyer acted in bad faith.

5 Finally, Pro Se argues that the Court can craft a remedy even if the property's
6 sale cannot be undone. Whether the Court can fashion effective relief is immaterial in
7 this case. "[F]or [sale of assets] cases in which a court is able to fashion relief, the
8 exception has operated in only one situation: 'where real property is sold to a creditor
9 who is a party to the appeal.'" *In re Onouli-Kona*, 846 F.2d at 1172 (quoting *Sun Valley*
10 *Ranches, Inc. v. Equitable Life Assurance Soc'y of the United States (In re Sun Valley*
11 *Ranches, Inc.)*, 823 F.2d 1373, 1375 (9th Cir.1987)). In this case, the purchaser of the
12 property was not a creditor who was party to the appeal and thus the Court's ability to
13 fashion relief is irrelevant.

14 The Court therefore finds that the sale of the roll-off truck, challenged in Pro Se's
15 appeal, is protected by the Safe Harbor Provision, rendering Pro Se's appeal moot.

16 **V. CONCLUSION**

17 It is hereby ordered that Appellee's Motion to Dismiss Appeal (dkt. no. 40) is
18 granted.

19 The Clerk is directed to serve a copy of this Order on the Bankruptcy Court within
20 seven (7) days and such service constitutes this Court's mandate. The Clerk of the Court
21 is further instructed to close this case.

22 DATED THIS 28th day of January 2014.

23
24
25 

26 MIRANDA M. DU
27 UNITED STATES DISTRICT JUDGE
28